

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ELECTRIC POWER SUPPLY ASSOCIATION, *et al.*

Plaintiff,

v.

ANTHONY M. STAR, *et al.*,

Defendants.

No. 17 CV 1164

Judge Manish S. Shah

Magistrate Judge Susan E. Cox

PLAINTIFFS' AMENDED STATUS REPORT REGARDING FERC

In accordance with the Court's order on April 13, 2017 and Minute Entry (Dkt. #70), Plaintiffs Electric Power Supply Association, *et al.* ("Plaintiffs") respectfully submit this status report concerning the Court's questions about seeking the views of the Federal Energy Regulatory Commission ("FERC") on issues in this case:

Plaintiffs confirm that they have no objection to the Court inviting FERC to provide its views regarding relevant issues in this case, and believe that doing so is desirable. We note that at the Supreme Court's request in the *Hughes* case, the Solicitor General filed a brief expressing the views of the United States, and in the New Jersey case, FERC filed an amicus brief at the Third Circuit's request.

Plaintiffs contacted FERC's Office of General Counsel regarding FERC's position with respect to a request from the Court. FERC indicated that it would prefer not to participate at this time. However, if asked to do so by the Court, it will respond to a request, though its response may include caveats that FERC does not presently have enough commissioners to constitute a quorum. The contact information is:

David L. Morenoff, General Counsel
Federal Energy Regulatory Commission
888 First St. NE
Washington, DC 20426
Phone: 202-502-6000
Fax: 202-208-2115
Email: david.morenoff@ferc.gov

The Parties discussed filing a joint status report, but were unable to reach agreement because it appears to be Exelon's position that limitations on FERC's response would be due to the existence of pending requests for revisions to the so-called "Minimum Offer Price Rule," or "MOPR" provisions of PJM's tariff. This refers to requests made to FERC to utilize its authority to minimize the market distortion caused by ZEC subsidies by requiring subsidized nuclear facilities to bid minimum prices in energy and capacity auctions. Plaintiffs disagree that the pendency of these requests – on which FERC cannot act due to lack of a quorum – precludes FERC's participation in this case by, for example, expressing its views on whether zero emission credits "affect" or are "in connection" with the wholesale markets and therefore subject to FERC's exclusive jurisdiction. In any event, FERC can best address directly any limitations it perceives related to such factors.

In light of Plaintiffs' pending request for preliminary injunctive relief, Plaintiffs seek to avoid unnecessarily delaying these proceedings. Accordingly, in the event that the Court invites FERC's participation, Plaintiffs respectfully request that it set a deadline consistent with the schedule for resolution of the motions to dismiss made by Defendants and Exelon.

Dated: April 20, 2017

Respectfully submitted,

By: /s/ Stuart S. Singer
Stuart S. Singer

Jonathan S. Massey (*pro hac vice*)
MASSEY & GAIL, LLP
1325 G Street, NW,
Suite 500
Washington, DC 20005
Telephone: (202) 652-4511
jmassey@masseygail.com

Jonathan D. Schiller (*pro hac vice*)
David A. Barrett (*pro hac vice*)
BOIES SCHILLER FLEXNER, LLP
575 Lexington Avenue, 7th Floor
New York, NY 10022
Telephone: (212) 446-2300
jschiller@bsfllp.com
dbarrett@bsfllp.com

Leonard A. Gail
Suyash Agrawal
Paul J. Berks
MASSEY & GAIL, LLP
50 East Washington Street, Suite 400
Chicago, IL 60602
Telephone: (312) 283-1590
lgail@masseygail.com
sagrawal@masseygail.com
pberks@masseygail.com

Stuart H. Singer (*pro hac vice*)
William T. Dzurilla (*pro hac vice*)
BOIES SCHILLER FLEXNER LLP
401 East Las Olas Blvd., Suite 1200
Fort Lauderdale, FL 33301
Telephone: (954) 356-0011
ssinger@bsfllp.com
wdzurilla@bsfllp.com

Edward J. Normand (*pro hac vice*)
Jason C. Cyrulnik (*pro hac vice*)
BOIES SCHILLER FLEXNER LLP
333 Main Street
Armonk, NY 10504
Telephone: (914) 749-8200
enormand@bsfllp.com
jcyrulnik@bsfllp.com

Attorneys for Plaintiffs